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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 UNITED STATES OF AMERICA,
17 Plaintiff,
18 v.
19 \$100,000.00 Seized from
20 Redstone Credit Union Account
21 No. '3207,
22 Defendant.

No. CV 15-05849-BRO (FFMx)

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR ENTRY OF DEFAULT JUDGMENT
AGAINST THE INTERESTS OF KNOWN
POTENTIAL CLAIMANTS CHUN TUCKER AND
THE REPUBLIC OF KOREA, AND ALL
UNKNOWN POTENTIAL CLAIMANTS;
MEMORANDUM OF POINTS AND AUTHORITIES;
DECLARATION OF FRANK D. KORTUM**

Date: March 6, 2017

Time: 1:30 p.m.

Crtrm: 7C

350 West 1st Street

Los Angeles, California

Before The Honorable Beverly Reid

O'Connell, U.S. District Court Judge

1 PLEASE TAKE NOTICE that on March 6, 2017 at 1:30 p.m., plaintiff
2 United States of America will present a motion for entry of default
3 judgment against the interests of (A) known potential claimants Chun
4 Tucker and the Republic of Korea; and (B) all unknown potential
5 claimants. The motion will be heard before the Honorable Beverly Reid
6 O'Connell, United States District Court, Courtroom 7C, 350 West 1st
7 Street, Los Angeles, California.

8 This motion is brought pursuant to Rule 55(b)(2) of the Federal
9 Rules of Civil Procedure and Rule 55-1 of the Local Rules of Practice
10 for the Central District of California.

11 This motion is based upon the accompanying Memorandum of Points
12 and Authorities; the Declaration of Frank D. Kortum; and all other
13 facts appearing in the Court's file; and upon such further evidence,
14 oral or documentary, as may be presented prior to or at the hearing
15 of this motion.

16 Dated: January 19, 2017

Respectfully submitted,

18 EILEEN M. DECKER
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19 LAWRENCE S. MIDDLETON
Assistant United States Attorney
20 Chief, Criminal Division
21 STEVEN R. WELK
Assistant United States Attorney
22 Chief, Asset Forfeiture Section

23 /s/ Frank D. Kortum
24 FRANK D. KORTUM
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MEMORANDUM OF POINTS AND AUTHORITIES

I. THE POTENTIAL CLAIMANTS ARE IN DEFAULT

On August 3, 2015, the United States of America (the "government" or "plaintiff") filed a Verified Complaint for Forfeiture as to the defendant \$100,000 Seized from Redstone Credit Union Account '3207 (the "defendant"), in this action pursuant to 18 U.S.C. § 981(a)(1)(A) and (C). Dkt. 1. See Declaration of Frank D. Kortum ("Kortum Declaration") at ¶ 2.

On September 10, 2015, process was executed upon the defendant by the United States Marshals Service in accordance with Supplemental Rule E(4)(b). Attached to the Kortum Declaration as Exhibit "A" is a true and correct copy of the Process Receipt and Return (USM-285). Dkt. 12; Kortum Decl. ¶ 3.

Beginning on August 10, 2015, notice of Civil Forfeiture was posted on an official government internet site (www.forfeiture.gov) for at least 30 consecutive days, as required by Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Attached to the Kortum Declaration as Exhibit "B" a true and correct copy of the internet Proof of Publication. Dkt. 11; Kortum Decl. ¶ 4.

On November 5, 2015, GS Caltex Corporation ("Caltex") filed a claim of interest in the defendant and on November 23, 2015, Caltex filed an answer to plaintiff's complaint. Dkts. 12 & 15. On December 13, 2016, the Department of Justice granted Caltex's petition for remission. Kortum Decl. ¶ 5.

NOTICE TO CHUN TUCKER

On September 2, 2015, the United States sent notice of the

1 Complaint to potential claimant Chun Tucker ("Tucker") at the
2 following last known addresses:

3 a. Los Angeles, California 90020;¹ and

4 b. in care of Robert K. Steinberg, Esq., 12304 Santa
5 Monica Blvd., 3rd Floor, Los Angeles, California 90025

6 The notices were sent by certified mail with a claim letter
7 describing the defendant seized in the above action and giving notice
8 as to the time within which a claim and answer were required to be
9 filed as required by Local Rule C(4)(a)(3). Copies of the Complaint
10 and the United States Marshals Service Notice of Seizure were also
11 provided. Attached to the Kortum Declaration as Exhibit "C" is a
12 true and correct copy of the returned certified mail envelope with
13 the notice "RETURN TO SENDER UNABLE TO FORWARD." Attached to the
14 Kortum Declaration as Exhibit "D" is a true and correct copy of the
15 claim letter and a copy of the returned certified mail return receipt
16 card for Tucker, in care of Robert K. Steinberg, Esq., at 12304 Santa
17 Monica Blvd., 3rd Floor, Los Angeles, California 90025, indicating
18 that the claim letter was received and accepted. Kortum Decl. ¶ 6.

19 **NOTICE TO THE REPUBLIC OF KOREA**

20 On September 2, 2015, the United States sent notice of the
21 Complaint to potential claimant to the Republic of Korea, in care-of
22 Il-Su Lim, Deputy Chief of ICC, International Cooperation Center
23 Supreme Prosecutors' Office, Republic of Korea, 157 Banpo-daero,
24 Seocho-gu, Seoul 137-730, Korea. The notice was sent by registered
25 mail with a claim letter describing the defendant seized in the above
26 action and giving notice as to the time within which a claim and

27 ¹ Pursuant to Local Rule 5.2-1, residential addresses have been
28 omitted from this motion.

1 answer were required to be filed as required by Local Rule
2 C(4)(a)(3). Copies of the Complaint and the United States Marshals
3 Service Notice of Seizure were also provided. Attached to the Kortum
4 Declaration as Exhibit "E" is a true and correct copy of the claim
5 letter and the envelope sent registered mail to the Republic of
6 Korea. Kortum Decl. ¶ 7.

7 In accordance with Supplemental Rule G(5), the time for
8 potential claimants Tucker and the ROK to file a claim in this action
9 expired on October 7, 2015, and the time for filing an answer expired
10 on October 28, 2015. Kortum Decl. ¶ 8.

11 In accordance with Supplemental Rule G(5), all interested
12 parties who have not received direct notice must file a claim no
13 later than 60 days after the first day of publication of an official
14 internet government forfeiture site and an answer within 21 days
15 thereafter. The first day of publication of this action on the
16 government forfeiture site was August 10, 2015. Kortum Decl. ¶ 9.

17 Plaintiff has not received a filed claim or answer from known
18 potential claimants Tucker and the ROK or any potential claimant,
19 other than Caltex. Kortum Decl. ¶ 10.

20 Based on information and belief, known potential claimant Tucker
21 is neither a minor nor incompetent person. Kortum Decl. ¶ 11.

22 Based on information and belief, known potential claimant Tucker
23 does not serve in the U.S. military; accordingly, the Servicemembers
24 Civil Relief Act of 2003 does not apply. Kortum Decl. ¶ 12.

25 On August 11, 2016, plaintiff filed an application for entry of
26 default by the Clerk against the interests of known potential
27 claimants Tucker and the ROK, and all unknown potential claimants
28

1 since known potential claimants, other than Caltex, have failed to
2 file a claim and/or answer (and the time to file a claim and answer
3 has expired). Dkt. 26. Kortum Decl. ¶ 13.

4 On January 13, 2016, a Default by Clerk was entered against the
5 interests of known potential claimants Tucker and the ROK, and all
6 unknown potential claimants. Attached to the Kortum Declaration as
7 Exhibit "F" is a true and correct copy of the Default by Clerk. Dkt.
8 34; Kortum Decl. ¶ 14.

9 On the date of filing, this Notice of Motion and Motion for
10 Entry of Default Judgment was served by U.S. mail on known potential
11 claimants Tucker and the ROK at their last known addresses. Kortum
12 Decl. ¶ 15.

13 **II. ARGUMENT**

14 **A. THE STANDARD FOR ENTRY OF JUDGMENT BY DEFAULT**

15 **1. THE EITEL FACTORS**

16 After the Clerk has entered default for failure to plead or
17 otherwise defend an action, the court may enter judgment by default
18 on the plaintiff's complaint. Fed.R.Civ.P. 55(a), 55(b)(2). "Even
19 if entry of default has been made by the court clerk, granting a
20 default judgment is not automatic; rather it is left to the sound
21 discretion of the court." PepsiCo v. Triunfo-Mex, Inc., 189 F.R.D.
22 431, 432 (C.D. Cal. 1999) (citing Aldabe v. Aldabe, 616 F.2d 1089,
23 1092 (9th Cir. 1980)); Laborers Health and Welfare Trust Fund for
24 Northern California v. Demas Construction, No. C-96-3132 DLJ, 1997 WL
25 227976 at *1 (N.D. Cal. March 14, 1997) (citing Draper v. Coombs, 792
26 F.2d 915 (9th Cir. 1986)); see Ioane v. Alter, No. CIV. 96-20629,
27 1997 WL 767526 at *3 (N.D. Cal. November 21, 1997) (citing
28

1 Alan Neuman Productions, Inc. v. Albright, 862 F.2d 1388, 1392 (9th
2 Cir. 1988)).

3 In exercising its discretion to grant or deny a motion for
4 default judgment, courts typically consider the following factors:

5 (1) The possibility of prejudice to the plaintiff, (2) the
6 merits of plaintiff's substantive claim, (3) the
7 sufficiency of the complaint, (4) the sum of money at stake
8 in the action; (5) the possibility of a dispute concerning
9 material facts; (6) whether the default was due to
10 excusable neglect, and (7) the strong policy underlying the
11 Federal Rules of Civil Procedure favoring decisions on the
12 merits.

13 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir.1986) (the "Eitel
14 Factors"). Furthermore, when considering whether to grant default
15 judgment, courts generally assume the factual allegations of the
16 complaint to be true. Geddes v. United Financial Group, 559 F.2d
17 557, 560 (9th Cir. 1977); TeleVideo Systems, Inc. v. Heidenthal,
18 826 F.2d 915, 917-918 (9th Cir. 1987).

19 The Eitel Factors in this case weigh heavily in support of
20 default judgment. The plaintiff would be highly prejudiced if
21 default judgment was not granted, because "it would be forced to
22 continue the litigation even though no party has filed an answer or a
23 claim." United States v. Approximately \$194,752 in U.S. Currency,
24 No. C-11-1400 EMC, 2011 WL 3652509 at *3 (N.D. Cal. August 19, 2011).
25 Additionally, as discussed in detail below, the government has
26 established that the defendant is subject to forfeiture pursuant to
27 18 U.S.C. § 981(a)(1)(C) as defendant represents or is traceable to
28

1 proceeds of the bribery of a public official in violation of 18
2 U.S.C. § 201.

3 Furthermore, there is no dispute as to material facts because no
4 valid claim and/or answer has been filed by known potential claimants
5 in this case, other than Caltex, and there is no evidence that the
6 default is due to excusable neglect. Finally, while policy
7 considerations favor a decision on the merits, it is not possible to
8 decide this case on the merits with respect to the defendant, since
9 no other known potential claimant has not filed an answer or appeared
10 to contest forfeiture of the defendant real properties. Therefore,
11 default judgment is appropriate. Id.

12 2. PROCEDURAL REQUIREMENTS

13 A party seeking default judgment must establish: (a) when and
14 against what party the default was entered; (b) the identification of
15 the pleading to which default was entered; (c) whether the defaulting
16 party is an infant or incompetent person, and if so, whether that
17 person is represented by a general guardian, committee, conservator
18 or other representative; (d) that the Servicemembers Civil Relief Act
19 of 2003 does not apply; and (e) that notice has been served on the
20 defaulting party, if required by Federal Rule of Civil Procedure
21 55(b)(2). As set forth above, these procedural requirements have
22 been met.

23 3. FAILURE TO FILE A VALID CLAIM AND ANSWER

24 Default judgment is appropriate against a party who failed to
25 file a claim where the government has complied with the procedural
26 requirements of Rule G. Fed.R.Civ.P. 55; United States v. 1999 Lexus
27 GS400, No. C 05-1139 PJH, 2007 WL 1056791 at *2-3 (N.D. Cal. April 6,
28

2007)). Further, in order to contest a forfeiture action, a claimant must have Article III and statutory standing. United States v. \$148,840.00 in U.S. Currency, 521 F.3d 1268, 1273 & n. 3 (10th Cir. 2008); United States v. \$515,060.42 in U.S. Currency, 152 F.3d 491, 497 (6th Cir. 1998); United States v. One 1985 Cadillac Seville, 866 F.2d 1142, 1148 (9th Cir. 1989). A verified claim is a prerequisite to establishing statutory standing. United States v. 2007 Chrysler 300 Touring VIN:2C3KA53G27H883668, No. CIV 10-0246 JB/WDS, 2011 WL 1119701 at *1 (D. N.M. March 10, 2011) (citing United States v. \$11,918.00, No. 1:03-cv-05679-AWI-SMS, 2007 WL 3037307 at *7 (E.D. Cal. October 17, 2007)). As noted above, known potential claimants were specifically informed by the government of the requirement to file a claim on or before October 7, 2015, and an answer or Rule 12 motion within 21 days of filing a claim. No notice of interested parties has been filed other than Caltex. Accordingly, known potential claimants Chun Tucker and the ROK have no statutory standing in this matter. United States v. One 2001 Cadillac Deville Sedan, 335 F.Supp. 2d 769, 772-3 (E.D. Mich. 2004) (claimant who did not comply with Supplemental Rule C(6) by filing a verified claim lacks statutory standing); United States v. \$50,200 in U.S. Currency, 76 F.Supp. 2d 1247, 1253 (D. Wyo. 1999) (same); United States v. One Hundred Four Thousand Six Hundred Seventy-Four Dollars (\$104,674.00), 17 F.3d 267, 268 (8th Cir. 1994) (strict compliance with Supplemental Rule C (6) is required); United States v. Currency \$267,961.07, 916 F.2d 1104, 1108 (6th Cir. 1990) (same). Therefore, known potential claimants, other than Caltex, are properly in default and the facts of the complaint are to be deemed admitted.

1 **B. THE VERIFIED COMPLAINT ALLEGES A SUFFICIENT CLAIM FOR**
2 **FORFEITURE**

3 Under the terms of the Status of Forces Agreement ("SOFA")
4 between the ROK and the United States, contractors working for the
5 United States Armed Forces Korea ("USFK") are exempt from ROK taxes
6 on gasoline and other petroleum products purchased for official use
7 in the ROK. The terms of the SOFA also provide that the USFK is
8 responsible for certifying the eligibility of contractors to receive
9 the tax exemptions and providing them a Tax Exemption Coupon for the
10 purchase of petroleum products. Each coupon identifies, inter alia,
11 the USFK contract number, the name of the company from which the
12 petroleum products are to be purchased, the price and quantity of the
13 purchase and the identity of the issuing officer. When the coupons
14 are used at a Korean gas station, the station owner calculates the
15 amount of Korean taxes exempted and the purchaser only pays the net
16 amount. Tucker worked in Korea as a Contract Branch Chief with the
17 Army Corps of Engineers, and was responsible for issuing tax exempt
fuel coupons to USFK contractors. See Complaint ¶ 8.

18 In 2004, Tucker began accepting bribes in exchange for
19 distributing the fuel coupons to Chang-Kyu Kim ("Kim"), the owner of
20 a gas station in Korea. In order to facilitate payment of the
21 bribes, Kim opened an account at Shinhan Bank ROK under his name,
22 deposited the bribe payments into the account, and gave Tucker access
23 to the account. Tucker would then withdraw the bribe payments from
24 the account after Kim deposited them. Kim made over \$400,000.00 in
25 bribe payments to Tucker in exchange for the fuel coupons. Id. at
26 ¶ 9.

27 The fuel coupons that Tucker delivered to Kim were fraudulent in
28 that, inter alia, they referenced either non-existent or ineligible

1 contracts. The bribery scheme described above caused a revenue loss
2 to the ROK of approximately \$9.5 million in 2006 alone. Id. at ¶ 10.

3 During the time of the bribery scheme, Tucker maintained
4 accounts at Redstone Federal Credit Union in Alabama and Community
5 Bank in Korea. Tucker made over \$268,000 in deposits to her Redstone
6 account between 2004 and 2006, which originated from Tucker's
7 Community Bank account. Tucker had no legitimate source of income
8 between 2004 and 2006 other than her salary as an Army employee. The
9 sums deposited into Tucker's Redstone account between 2004 and 2006
10 significantly exceeded her legitimate salary. Id. at ¶ 11.

11 On June 9, 2014, Tucker agreed to plead guilty to one count of
12 bribery. See United States v. Tucker, No. CR 11-00248-JFW (C.D.
13 Cal.) (Dkt. 5, filed April 8, 2015). Id. at ¶ 12.

14 **C. THE COMPLAINT'S ALLEGATIONS ESTABLISH THAT THE DEFENDANT IS
15 SUBJECT TO FORFEITURE**

16 Pursuant to the statute upon which the claim for relief is
17 based, plaintiff alleges that the defendant represents or is
18 traceable to proceeds of the bribery of a public official in
19 violation of 18 U.S.C. § 201. The defendant is therefore subject to
20 forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C).

21 **D. THE PROPOSED DEFAULT JUDGMENT**

22 Because the facts admitted by the defaulting parties establish
23 that the defendant is subject to forfeiture, judgment by default
24 against the interests of known potential claimants Tucker and the
25 ROK, and all unknown potential claimants should be entered pursuant
26 to Federal Rule of Civil Procedure 55(b)(2), in light of their
27 failure to defend.
28

1 Once a court has decided that judgment should be entered by
2 default, the court must determine the character of the recovery to
3 grant the plaintiff. 10A Wright, Miller & Kane, Federal Practice and
4 Procedure 3d § 2688. The proposed default judgment grants the very
5 relief sought in the complaint (forfeiture of the defendant to the
6 United States of America for disposition according to law).

7 **III. CONCLUSION**

8 For the foregoing reasons, the government respectfully requests
9 that the Court grant this motion for a default judgment.

10 Dated: January 19, 2017

Respectfully submitted,

11
12 EILEEN M. DECKER

United States Attorney

13 LAWRENCE S. MIDDLETON

Assistant United States Attorney

14 Chief, Criminal Division

15 STEVEN R. WELK

Assistant United States Attorney

16 Chief, Asset Forfeiture Section

17
18 /s/ Frank D. Kortum

FRANK D. KORTUM

19 Assistant United States Attorney

20 Attorneys for Plaintiff

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